

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS31/2014

[2016] SCSC237

Bryan Moumou

Plaintiff

versus

Dolly Joseph

Defendant

Heard: 1st February 2016

Counsel: Basil Hoareau for plaintiff

Lucie Pool for defendant

Delivered: 5th April 2016

JUDGMENT

M. TWOMEY, CJ

1. Agreed Facts

[1] The following facts are not in dispute. The Plaintiff is and was at all material times the owner of the land comprised in title number C5755 situated at Pointe au Sel, Mahé and the Defendant is and was at all material times the owner of an adjoining piece of land, namely the parcel of land comprised in title number C4145.

[2] The Plaintiff for a period of about thirteen years obtained his water from the Public Utilities Company (PUC) through a water pipe that traversed the Defendants land on its southern boundary abutting with a driveway positioned on a right of way.

Case for the Plaintiff

[3] In his Plaint filed on 25th March 2014, the Plaintiff claims that in April 2012 the Defendant damaged the water pipe and disconnected the water supply to the Plaintiff's water tank and to his house.

[4] He states that as a result he has had to have a temporary arrangement whereby the water pipe had to be relocated on Parcels C2539 and C 5239 belonging to third parties and the pipe consequently runs a longer distance to reach his water tank.

[5] He states that it would be just and equitable to have the pipe located in its original position.

[6] He prays therefore for a declaration that he has a right to locate the water pipe on Parcel C4145 and for an order for a perpetual prohibitory injunction against the Defendant prohibiting the Defendant from damaging or tampering with the water pipe.

Case for the Defendant

[7] In her Statement of Defence filed on 20th October 2014, the Defendant admits that there is a right of way in favour of the Plaintiff on the southern boundary of her property but that there is no encumbrance in relation to the water pipe registered against her land.

[8] She denied damaging or disconnecting the water pipe and stated that she had no obligation to accommodate the Plaintiff's water pipe on her land.

[9] She prayed for a dismissal of the case with costs.

The Evidence in the case

[10] The Plaintiff testified. He produced documents of title relating to his land and that of the Defendant. He pointed to the fact that presently the water pipe traverses the properties of an Italian man named Marco and a lady named Erica Sidonie. He stated that previously

the water pipe supplying water to his house had been laid on the Defendant's land but had been buried under the ground next to the access road. He stated that it had laid there for sixteen years until it had been damaged by a vehicle carrying out work on the Defendant's land.

- [11] On being questioned by the Court, he stated that the pipe had been laid across the Defendant's land by the PUC. In cross-examination he explained that his land, namely Parcel C5755 was bought from the defendant's father. He had cohabited with the Defendant's sister and when their relationship had ended there had been a division in kind and he bought out the Defendant's sister's share.
- [12] He admitted receiving a letter from Mr. John Renaud, a lawyer retained by the Defendant in which letter he had been asked to remove the water pipe from her property.
- [13] He stated that after the pipe was damaged he did not have a water supply for one month and eventually because of objections from the Defendant, the PUC laid the pipe in its present position.
- [14] He admitted that the Defendant and he were not on good terms.
- [15] Mr. Yvon Fostel, a land surveyor with over twenty years' experience was called as a witness for the Plaintiff. He stated that he had been instructed by the Plaintiff to survey the land in issue and to draw up a survey plan to show the location of the water pipe. He visited the site in April 2012. He produced his report dated 4th May 2013 in which he observed that a water pipe crossed a concrete drive leading to the Plaintiff's land.
- [16] He specified that the water pipe crossed the Defendant's land and then entered onto the Plaintiff's land but was on the existing right of way. He stated that the extent of the area occupied by the pipe on the Defendant's land was less than one square meter. He stated that the pipe could be located under the ground.
- [17] The Defendant also testified. She produced a certificate of search from the Land Registry in relation to her land, Parcel C4145 and indicated that her land was not burdened by any encumbrance or easement.

- [18] She explained the incident in which the plaintiff's water pipe had been damaged. Her son, since deceased, had been stricken with sickle cell anaemia and had suffered a stroke. He needed continuous medical intervention and was transported from her house to the hospital by ambulance which needed to have motorable access to her house. It was for this reason that she had undertaken the work on widening the road. In the process the water pipe was damaged.
- [19] She explained that there had been bad blood between herself and the Plaintiff which started with the work on her property in the course of which the Plaintiff complained that the construction work had resulted in water being diverted to his property. She admitted that the water pipe had been similarly located when her sister was living on the land now solely occupied by the Plaintiff.
- [20] She produced a letter dated 7th March 2012 which she had asked her then lawyer to send to the Plaintiff in which she asked him to remove his water pipe from her land.
- [21] She stated that he refused and the PUC were involved in relocating the pipe. Although the Plaintiff wanted it located in the same place PUC decided to relocate the pipe on the other side of the land to prevent it from being damaged again as work was being undertaken on her land.
- [22] She stated she did not want the pipe to be relocated onto her land as she did not want to be involved in further altercation with the plaintiff.
- [23] In cross examination it was pointed out to her that the letter to the Plaintiff stated that it was the plaintiff who had dug up her drive way. She insisted that the water pipe was not under the ground as claimed by the Plaintiff.
- [24] Mr. Steve Mussard, the Managing Director for Water and Sewage at PUC was called as a witness by the Defendant. He explained that in general, water pipes are not relocated unless prone to damage. He also stated that when water pipes are run along rights of way PUC does not seek the consent of the land owners concerned. He stated that he could not see any reason why the water pipe going to Parcel C5755 should now be relocated.

[25] When questioned by the Court, he admitted that PUC are mandated by law to lay water pipes across land anywhere. He stated they do so forcefully whenever consent is sought but refused.

Submission of Counsel

[26] No submission oral or written were received from the Plaintiff's Counsel. The Defendant's Counsel submitted that the law applicable are the provisions applicable to easements in the Civil Code, namely Articles 637, 639 and 686. She also referred the Court to the Regulations of the Public Utilities Act.

The Law

[27] The provisions cited by Ms Pool for the Defendant are applicable when easements arise from the position of land. They are not applicable to this case. This is a case concerning easements established by law. The applicable provisions of the Civil Code are the following:

Article 649

Easements established by law have for their object the public or local benefit or that of individuals.

Article 650

Those established for the public or local benefit relate to the building or repairing of roads and other public or local works.

Everything that concerns this type of easement is determined by laws or special regulations.

Article 651

The law shall bind owners to various obligations towards one another, independently of any agreement.

Article 652

A part of these obligations is laid down in the laws.

The rest relate to walls and partition ditches, to cases in which a retaining wall is necessary, to ancient lights over neighbouring property, to roof drains and to rights of way.

[28] Such easements include the provision of water to home owners. The provision of treated or untreated water to home owners is regulated by the Public Utilities Corporation Act. The applicable provisions to this case are the following:

5. (1) *the functions of the Corporation shall be -*
 - (a) *the supply of electricity;*
 - (b) *the supply of water;*
 - (c) *the provision of sewerage;*

(d) such other functions as may be conferred on the Corporation by any other Act or by any regulations made under this Act.

(2) Regulations may provide for all matters in respect of the functions of the Corporation.

6. *(1) Subject to this Act, the Corporation shall have power to do all the things necessary or convenient to be done for or in connection with, or incidental to the exercise of its functions.*

[29] The Regulations referred to in section 5 (2) (supra) applicable to this case are to be found in the Public Utilities Corporation (Miscellaneous) Regulations 1986:

3. *(1) Any employee of the Corporation, with such assistance as and is necessary, may, at any reasonable time, enter upon any land or land premises for the purpose of exercising the functions of the Corporation and may occupy such land to carry out thereon any prescribed operation.*

[30] The prescribed functions referred to include:

(b) in relation to the supply of water and the provision of sewerage -

(i) constructing, building, placing or laying plant, machinery, equipment, pipes, sewers or mains;

(ii) maintaining, removing, demolishing or replacing plant, machinery, equipment, pipes, sewers, mains or buildings whether or not constructed, built, placed, laid or erected by the Corporation;

(iii) provision of dams, treatment works, reservoirs, pump stations, service pipes and other apparatus as may be necessary for the supply of treated and untreated water;...

(c) in relation to matters dealt in paragraphs (a), and (b) -

(i) breaking open roads, bridges, sewers or drains;

(ii) making cuttings or excavations;

(iii) felling or removing trees or vegetation;

(iv) carrying out any inspections, surveys or tests.

(3) *Before exercising any power under subregulation (1), the Corporation shall-*

(a) *give the occupier or owner of any land on, under or over which any prescribed operation is intended to be carried out 14 days' notice in writing setting out the nature and extent of the operation intended to be carried out unless such operation is carried out with the consent of the owner or occupier or, due to the urgency of the circumstances necessitating such operation, it is not practicable to give such notice; and*

(b) *where a prescribed operation referred to in sub-regulation (2) (i) (ii) or (iii) is intended to be carried out, obtain the approval of the Ministry responsible for Environment.*

(4) *Notice under sub-regulation (3) may be given to the occupier or owner by sending it by post to his last known address or, if his address cannot be ascertained, by affixing it to a conspicuous part of the land or premises on, under or over which the operation, is intended to be carried out.*

[31] The Land Registration Act also provides:

Overriding interests

Section 25. Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same without their being noted on the register:-

...

(b) easements for the benefit of the public or arising by law;

Discussion

[32] I have laid out the law *in extenso* if only to show the futility of this suit.

[33] It is clear from the laws cited that the supply of water is an easement for the benefit of the public and is created by law.

- [34] The Defendant produced a certificate of search of her land title to show that there was no registration of an easement relating to the water pipe on her land. It must be noted that the positioning of public water pipes on land is not one that needs registration. This is clear from section 25 (b) of the Land Registration Act (supra).
- [35] PUC are mandated to provide a water supply to a home owner. It is however entirely their decision and their decision alone as to where water pipes should be laid especially where such an exercise may exacerbate tempers and fraught neighbour relations.
- [36] Indeed the evidence of Mr. Steve Mussard the Managing Director for Water and Sewage at PUC bears this out. He explained that the consent of the owners is usually sought when water pipes are to be laid, that they are relocated for specific reasons and that there is a reluctance on the part of the Corporation to subsequently relocate the pipes unless there is good reason.
- [37] It would appear from the rest of the evidence that this whole saga arose purely out of bad neighbour relations. It was never a question of whether consent should have been given for the laying of the pipe in the first place. The water pipe is laid by PUC. They choose the best location for the pipes given the circumstances on site. This pipe was located in a right of way and no consent from anyone was necessary. It would appear that the pipe was damaged when building work was being carried out.
- [38] While the pipe should have been repaired and re-laid in its original position in 2012 this was not possible due to the fact that the building work was still ongoing. A decision was taken to lay it on the opposite side of the road in the same right of way. That it traverses a longer distance to the Plaintiff's house in neither here nor there. No evidence has been brought by the Plaintiff to indicate why that should be a disadvantage to him. In any course the position of the water pipe is the executive decision of the PUC taken in its discretion after observing the circumstances of the case. Their decision should not be interfered with.

Decision

- [39] In the circumstances this Court finds that the Plaintiff has failed to establish his case and the Plaintiff is hereby dismissed with costs.

Signed, dated and delivered at Ile du Port on 4th April 2016.

M. TWOMEY
Chief Justice